Q&A with Jennifer Paddock - 2010 05
By Jennifer Paddock

New owner's entitlement to attend meetings

Q1: We have three units in our scheme. I used to own two and have just sold one. The chairman and secretary own one and I am the managing agent. We are having a meeting to discuss the budget next week. Surely the new owner should be entitled to attend this meeting? Even though she is not a trustee.

A1: All owners are entitled to attend both meetings of owners and meetings of the trustees. So yes, the new owner is entitled to attend the meeting and s/he should have received adequate notice of this meeting in accordance with the rules of the scheme. I assume the meeting you are having next week is the AGM as this is the meeting at which the budget must be approved by the owners and a host of other compulsory business must be done in terms of prescribed management rule 56.

As your scheme is so small I would suggest that you try to bring the new owner onto the board of trustees so that all three owners are consulted before communal decisions are made.

Adding a pool to an excusive use area

Q2: I am a trustee in a scheme of 18 units. One of the top units has exclusive use of the roof above his unit and wishes to install a pool. The trustees and a majority of the owners are opposed and he has called for arbitration. Are there any precedents for this and how would you advise us to proceed?

A2: In terms of prescribed management rule 68(1)(vi) an owner may not place any structure or building improvement on his exclusive use area without the prior written consent of the trustees, which shall not be unreasonably withheld.

You and the rest of the trustees are obliged to thoroughly consider this owner's application to install a pool in his exclusive use area and are entitled to accept or reject his application provided you have based your decision on justifiable reasons. You must ensure that you and the other trustees 'apply your minds' to the matter in a meeting of trustees and make sure that the reasons for your decision are recorded in the minutes of the meeting as well as in a written response to the owner informing him of your decision.

I can understand why you and the majority of owners are opposed to this application as installing a pool on a roof can potentially cause leaks into the building in the future. If you and the rest of the trustees do decide to grant this owner permission to install the pool then I suggest that stringent conditions are attached to your consent for example making the owner liable for any resultant damage that may be caused from the installation of the pool and from the pool itself, and transferring all of the operational and financial maintenance and repair obligations in respect of the exclusive use area onto the owner.

If you and the rest of the trustees choose not to consent to the owner's application and he chooses to institute arbitration proceeding against you - you can't stop him from taking you to arbitration. However, don't worry too much about threats of arbitration, they are often empty threats. If you receive a formal notice of dispute then you and the rest of the trustees

can decide to instruct an attorney who is well versed in sectional title to assist you. If this occurs and you have adequately applied your minds to the matter, thoroughly considered the owner's application and recorded your decision and the reasons for it in the minutes of a meeting – you will have to rely on this to persuade the arbitrator that you acted reasonably in withholding your consent.

Transferring a special levy

Q3: Hi. I read the article on "Liable for special levy" and have a related question. The special levy was raised while I was the owner. The amount was to be paid to the body corporate over twelve months. If 6 months later my property was transferred to a purchaser, am I as original owner still liable for the last 6 months of special levy payments?

A3: According to the Sectional Titles Act, 1986 levies are due and payable on the passing of a resolution to that effect by the trustees of the body corporate and may be recovered from the persons who were owners of units at the time when the resolution making the levies due and payable was passed. This means that the person who owned the unit when the levy became due and payable is the only person from whom the body corporate may legally recover the levy. Therefore you, as the owner at the time the special levy was raised, are liable for all the installments payable in this regard.

You could however assign your levy liability obligations to the purchaser with effect from the date of transfer. Strictly speaking, you and the purchaser are not able to conclude such an agreement on your own. The body corporate must accept the benefits of such an agreement, releasing you from your statutory obligation and acquiring a contractual right to recover the outstanding levies from the purchaser. This can be achieved by way of a "tripartite agreement" entered into by you, the purchaser and body corporate.

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